TITULAR ROMAN CATHOLIC BISHOP OF MALACCA *a*

v.

TEOH TEIK SENG & ANOR.

HIGH COURT MALAYA, PENANG
WAN ADNAN J
[ORIGINATING SUMMONS NO. 24-465-89] *b*
6 JANUARY 1990

CIVIL PROCEDURE: *Order 89 Rules of the High Court 1980 - Serious dispute in evidence - Discretion of Court.*

The plaintiffs, being the registered owners of the land (the said land) granted the defendant a licence to quarry rocks on the said land for a monthly licence fee of RM50. The plaintiffs allege that the licence was terminated by notice dated 3 April 1989, the defendant refuses to vacate alleging that he was a tenant who had been paying rental of RM40 a month, he was therefore protected by the Control of Rent Act 1966. *c*

The plaintiff instituted proceedings for recovery of possession of the said land through the summary procedure under O. 89 of the Rules of the High Court 1980 (RHC). *d*

Held:

[1] Order 89 is taken from O. 113 of the English Rules of the Supreme Court 1965 and does not extend to a claim for possession of land against a tenant holding over after the termination of the tenancy.

[2] The scope of the order was discussed in *Bristol Corporation v. Persons Unknown* [1974] 1 All ER 593. On the evidence, there is a serious dispute as to whether the defendant was a tenant or merely a licensee and this question cannot be resolved in this application. Using the Court's discretion, this particular case should not be brought in a summary way under O. 89. *e*

[Application dismissed with costs.] *f*

Case referred to:
Bristol Corporation v. Persons Unknown [1974] 1 All ER 593

Legislation referred to:
Rules of the High Court 1980, O. 89
Rules of the Supreme Court 1965 [UK], O. 113 *g*

For the plaintiffs - Cheah Choo Kheng; M/s. B.C. Teh & Cheah
For the defendant - V. Shanmugam; M/s. Shanmugam & Co.

JUDGMENT

Wan Adnan J:

(Lampiran 2) *h*

This is an application by the plaintiffs to recover possession of a piece of land occupied by the defendant through the summary procedure under O. 89 of the Rules of the High Court 1980.

i

The plaintiffs are the registered owner of the land in question. In their affidavit in support of the application the plaintiffs say that the defendant was given a licence to quarry rocks on the said land at a monthly licence fee of RM50. They further say that by notice dated 3 April 1989 the said licence was terminated. The defendant had refused to vacate and therefore is a trespasser on the said land.

The defendant in his affidavit says that the land was first occupied by his father around 1931 as proprietor of the firm, Sin Weng Heng. Now he is the proprietor. He is paying a rental of RM40 a month. The firm was allowed to occupy the land to carry on mason and stone work. A wooden building was erected on the said land around the year 1931. He claims protection under the Control of Rent Act 1966.

Counsel for the defendant says that the summary procedure under O. 89 is not available to the plaintiffs in the circumstances of the case.

Order 89(1) states as follows:

> (1) Where a person claims possession of land which he alleges is occupied solely by a person or person (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this order.

This order is taken from O. 113 of the English Rules of the Supreme Court 1965. The order does not extend to a claim for possession of land against a tenant holding over after the termination of the tenancy.

The scope of the order was discussed in *Bristol Corporation v. Persons Unknown* [1974] 1 All ER 593 in which Pennycuick VC said:

> Looking at the words of that rule, it seems to me to be clear that the order covers two distinct states of fact. The first is that of some person who has entered into occupation of the land without the licence or consent of the person entitled to possession or any predecessor in title of his, and secondly that of the person who has entered into occupation of the land with a licence from the person entitled to possession of the land or any predecessor in title of his but who remains in such occupation without the licence or consent of the person entitled to possession or any predecessor in title."

The plaintiffs alleged that the defendant was merely a licensee. Since the licence had been duly terminated the defendant's continued occupation was without their consent. They deny that the defendant was ever a tenant. The defendant on the other hand claims that he has been a tenant paying a rental of RM40 a month. He produced some receipts issued by the plaintiffs. There is a shed on the land which he said was built in 1931. The photograph of the shed is attached to the plaintiffs' affidavit. The defendant has also shown to the Court (see Exhibit TTS2) that the firm of Sin Weng Heng was registered on 27 July 1953. It commenced business on 1 February 1931 and the nature of business is "Mason and Stone Works". The plaintiffs did not deny this.

On the affidavits I find that there is a serious dispute as to whether the defendant was a tenant or merely a licensee. This question cannot be resolved in this summons for summary possession. I agree with Pennycuick VC when he said in the *Bristol Corporation case* (*supra*):

> It must, I think, be a matter for the Court in its discretion on the circumstances of the particular case to decide whether or not this is a case in which the proceedings should have been brought under RSC O. 113 and an order made on that summons.

It is my view that in the circumstances of this particular case this proceeding should not be brought in a summary way under O. 89. I therefore dismiss the application with costs.

Also found at [1990] 2 CLJ 306